## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

Warren B. Wilson, petitioner herein, prays that a writ of certiorari issue to review an order of the Supreme Court of the State of Oregon entered in the above entitled case on November 19, 1974.

### Opinions Below

There is no opinion, only a mandate from the Oregon Supreme Court, a letter from the Supreme Court of the Oregon State Bar Board of Bar Examiners and a letter from the chairman of that Board to the Oregon Supreme Court, all of which are respectively included here as Appendices A, B and C, *infra*, pp. 8-10.

### Jurisdiction

The order of the Supreme Court of the State of Oregon (Appendix A, *infra*, p. 8) was entered November 19, 1974. The jurisdiction of the Court is invoked under United States Code Title 28, Section 1257(3).

### Questions Presented

1. Can a state supreme court, consistent with the XIVth Amendment, disqualify an applicant for the bar, who passes the bar examination, where the only evidence before the Court relates to two instances where the rules allegedly violated are

contradictory, informal and incomplete, and do not include any sanctions for violations?

2. Are petitioner's rights of due process and equal protection of the law violated when his bar admission application is disqualified under the following circumstances?

A. Members of the bar Admission Committee and members of the state supreme court are defendants in a legal suit brought by petitioner wherein the Committee was compelled by a federal judge to reverse itself and to allow petitioner to take the bar examination;

B. Petitioner was identified personally by members of the Admission Committee before the examination commenced;

C. No other applicant for the bar in Oregon, or elsewhere as far as can be ascertained, has ever been punished even by reprimand, much less disqualification, for marking his answer sheet after time had been called during an examination;

D. The rules provide for, and the following announcement was made by an official after each test:

> "Time is up. Please stop work. Close your test book. Lay your answer sheet on top of your book. Remain seated as the books and answer sheets are being picked up by the Proctors. *As the test books are being collected, please check your answer sheet to see that you have marked all information in the correct spaces.* If you need assistance, contact your Proctor." [Emphasis added.]

Petitioner was observed when checking his answer sheet after time was called and for that alleged violation of the rules his application for admission has been denied.

**United States Constitutional Amendments Involved**

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Section I, Amendment XIV.

**Statute Involved**

"With the approval of the Supreme Court, the Board may appoint a committee to examine applicants and recommend to the Supreme Court for admission to practice law those who fulfill the requirements prescribed by law and the rules of the Supreme Court . . . ."

Section 9.210, Oregon Revised Statutes.

**Statement**

Early last year petitioner, a member of the California bar since 1953, sued members of the Oregon State Bar Board of Examiners, the Oregon State Bar Board of Governors and the Oregon Supreme Court in a civil rights action under 42 USC, paragraph 1983, raising issues as to residence requirements, expungement and exoneration in the United States District Court for the District of Oregon.

Petitioner's request for injunctive relief to allow him to take the bar examination in July, 1974, was in effect granted by the District Court whose "suggestion" that the Bar so stipulate was accepted by the defendants.

At the examination and before the tests were started, petitioner answered the roll call and was then personally

identified by Board of Examiner members. On two separate occasions involving a total of not more than three minutes, petitioner was observed to be writing on his answer sheet after time had been called. For this conduct the Board recommended and the Oregon Supreme Court approved denial of petitioner's application for admission to the Bar even though petitioner passed the examination and in spite of the fact that no other information as to petitioner's character was before the Board or the Court. The only formal rules of the Oregon Supreme Court with respect to the Board of Bar Examiners provide:

> "Duties.
>
> (1) The Board of Bar Examiners shall conduct all examinations of applicants to practice law in Oregon.
>
> (2) Unless otherwise indicated in these rules, all applications, certificates, affidavits and petitions shall be referred to the Board of Bar Examiners, which shall investigate and report to the Supreme Court its recommendations with respect thereto."
>
> Section 5.15, Supreme Court of the State of Oregon Rules for Admission of Attorneys, Revised January 22, 1974.

The Board has no formal rules for applicants taking the bar examination, only written procedures including a script for the Board members conducting the bar examination.

The same instruction, *supra*, p. 2, was given at the end of each separate part of the examination. It tells the applicant to stop work, close the test book, lay the answer sheet on top, remain seated as the books and answer sheets are being picked up but then specifies:

> "As the test books are being collected, please check your answer sheet to see that you have marked all

information in the correct spaces. If you need assistance, contact your Proctor."

The same information was announced by a Board member to all applicants at 10:30 a.m., 12:20 p.m. and 5:05 p.m.

Nowhere in the Board's procedures or script is there any suggestion of a penalty for working on an answer sheet after time is called on a particular test. Petitioner was following instructions in checking his answer sheet before it was picked up.

## Reasons for Granting this Writ

1. Petitioner was denied due process of law and equal protection in that his application for admission to the Bar in Oregon was rejected.

a. Even though he had express authority from oral instructions given by the the Board of Examiners at the end of each test to do exactly that for which he has been punished, namely, checking his answer sheet to see that he had marked all the information in the correct spaces.

b. Even though he had been given no notice that there was any penalty for working after time was called on a particular test.

c. Even though it appears to be invidious discrimination because there was no evidence or allegation that others taking the test were not doing exactly what petitioner did after time was called and because no other applicant in Oregon, and apparently elsewhere, has ever been penalized at all for working

on a test after time was called.

d. Even though if this could be determined to be a disqualifying flaw in petitioner's character, it should have been considered along with the results of the usual investigation of his character and, as customary, he should have had an opportunity for a fair hearing. *Willner v. Committee on Character and Fitness*, (1963)373 U.S. 98, 83 S.Ct. 1175.

NOTE:

Petitioner never requested that he be allowed to have a hearing. When he responded to the Oregon Supreme Court's request to show cause he expressly specified that his appearance was "limited" because petitioner intended to challenge the disqualification, if upheld, as a part of his pending federal court action. This was done, unsuccessfuily. See Opinion, Burns, J., January 24, 1975, *Wilson v. Gillis, et al.* Civil No. 74-521, U.S. District Court, Or., which opinion also ruled that petitioner's civil rights challenge was moot. Petitioner will file an identical action shortly in the same court.

2. Both the Board members and the Oregon Supreme Court members have a conflict of interest as defendants in petitioner's federal court action. By their decisions under the circumstances set forth in Reason 1, *supra*, they demonstrate that they are prejudiced against petitioner. Such responsible bodies should avoid even the appearance of using their powers to discriminate punitively, not to say imaginatively, against a person alleging in federal court that they have violated his civil rights and who, while doing so, becomes subject to the jurisdiction of these bodies.

3. Authority for the aforesaid reasons are the due process

and equal protection provisions of the XIVth Amendment and decisions of this court holding that a qualification enforced by a state supreme court over the admission of an applicant to its Bar must be subject to procedural due process and must have a rational connection to the applicant's fitness or capacity to practice law. *Schware v. Bar Examiners* (1957) 353 U.S. 232, 239, 77 S.Ct. 752, 756; *Konigsberg v. State Bar of California* (1957) 353 U.S. 352, 77 S.Ct. 722.

## Conclusion

For the foregoing reasons this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Charles O. Porter
200 Legal Center Building
858 Pearl Street
Eugene, Oregon 97401
Telephone: 503-687-2111

Counsel for petitioner

**APPENDIX A**

**SUPREME COURT**

**Mandate**

**In re:**
**WARREN B. WILSON**
**1974 Bar Examination**

**The court having duly considered the application of Warren B. Wilson for admission as an attorney in the State of Oregon, and being fully advised therein,**

**IT HEREBY IS ORDERED that the recommendation of the Board of Governors is accepted and the application of Warren B. Wilson is denied because of his conduct in the taking of the bar examination.**

**ENTERED at Salem, Oregon, this 19th day of November, 1974.**

## APPENDIX B

State of Oregon

SUPREME COURT

Loren D. Hicks
State Court Administrator

November 19, 1974

Mr. Harold D. Gillis, Chairman
Oregon State Bar Board of Bar
Examiners
Post Office Box 1147
Eugene, Oregon 97401

In re: Warren B. Wilson

Dear Mr. Gillis:

The Supreme Court has today decided to accept the recommendation of the Board of Governors in the above-entitled matter, as communicated to the court in your letter of August 26, 1974, and has accordingly denied Mr. Wilson's application to practice law in the State of Oregon because of his conduct in the taking of the examination.

Very truly yours,

J. David Gernant
Legal Counsel

JDG:mr
cc: Mr. John H. Holloway
Mr. Cleveland C. Cory
Mr. Charles Porter
Mrs. Marlyce Gholston
Hon. James M. Burns

## APPENDIX C

## OREGON STATE BAR

Board of Bar Examiners
808 S.W. 15th Avenue
Portland, Oregon 97205
Portland Metropolitan Area (503) 229-5788
Toll Free in State Wats: 800-452-7636

August 26, 1974

Honorable Loren D. Hicks
State Court Administrator
Supreme Court of the State of Oregon
Supreme Court Building
Salem, Oregon 97310

Re: *Warren Barlos Wilson*

Dear Judge Hicks:

The Board has voted unanimously to disqualify the examination of Warren B. Wilson, because Mr. Wilson was observed to be, and has admitted, violating the rules of the examination. As a consequence, the Board is unable to make a recommendation as to Mr. Wilson's learning and ability.

The Board has made no investigation or determination as to Mr. Wilson's character and fitness.

A copy of Mr. Wilson's file is enclosed. It includes the available evidence, including a copy of Mr. Wilson's own affidavit, concerning his violation of the rules.

Yours truly,

Harold D. Gillis
Chairman

HDG:mag
ccs: Mr. Warren Barlos Wilson
Charles O. Porter, Esq.
John H. Holloway, Esq.
All Members of the Board of Bar Examiners

SUPREME COURT, U. S.

FILED
APR 28 1975
MICHAEL RODAK, JR., CLERK

No. 74-1030

# In the Supreme Court of the United States

OCTOBER TERM, 1974

WARREN B. WILSON,

*Petitioner,*

v.

BOARD OF BAR EXAMINERS, OREGON STATE BAR,

*Respondent.*

## BRIEF OF BOARD OF BAR EXAMINERS, OREGON STATE BAR, IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

*On Petition for a Writ of Certiorari to the Supreme Court of the State of Oregon*

CLEVELAND C. CORY
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*Attorney for Respondent Board of Bar Examiners, Oregon State Bar*

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 4-75

No. 74-1030

# In the Supreme Court of the United States

OCTOBER TERM, 1974

WARREN B. WILSON,

*Petitioner,*

v.

BOARD OF BAR EXAMINERS, OREGON STATE BAR,

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## BRIEF OF BOARD OF BAR EXAMINERS, OREGON STATE BAR, IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

*On Petition for a Writ of Certiorari to the Supreme Court of the State of Oregon*

### JURISDICTION

The respondent, Board of Bar Examiners, Oregon Bar, opposes the petition for a writ of certiorari on the ground that this Court lacks jurisdiction to review the order of the Supreme Court of the State of Oregon denying petitioner's application for admission to practice law.

Even assuming that the Oregon Supreme Court's order is a "final judgment or decree" under 28 U.S.C. § 1257, the record before this Court is perfectly clear that the federal constitutional questions argued in the petition are raised for the first time in this Court.

The controlling statute, 28 U.S.C. § 1257(3) limits this Court's power to review judgments of state courts to cases where in lower court proceedings a title, right, privilege or immunity has been specially "... set up or claimed" ... under the Constitution. treaties, or federal statutes.

The petition does not even suggest that any federal constitutional right or privilege was raised or decided by the Oregon Supreme Court. The so-called "Mandate" of the Oregon court (Appendix A) is silent on the subject.

Accordingly, this case falls under the general rule of *Tacon* v. *Arizona*, 410 U.S. 351 (1973) and *Cardinale* v. *Louisiana*, 394 U.S. 437 (1969) that, in state court cases, federal questions raised for the first time in this Court are beyond this Court's jurisdiction.

## ARGUMENT

The record before this Court also shows that the petition is frivolous and without merit.

Petitioner is an experienced attorney who has been a member of the California bar for twenty-two years. After he took the Oregon attorney's examination in July 1974, the Board of Bar Examiners conducted an

investigation of his conduct, because as petitioner states (Pet. p. 4): "On two separate occasions involving a total of not more than three minutes, petitioner was observed to be writing on his answer sheet after time had been called." In the course of this investigation, Mr. Wilson submitted his own affidavit concerning his violation of the rules (Appendix C).

On August 26, 1974 the Board voted unanimously to disqualify petitioner's examination ". . . because Mr. Wilson was observed to be, and has admitted, violating the rules of the examination." As a consequence, the Board was ". . . unable to make recommendations as to Mr Wilson's learning and ability," and the Board made no investigation or determination as to Mr. Wilson's character and fitness (Appendix C).

The Board sent to the Oregon Supreme Court a copy of petitioner's file containing the available evidence, including petitioner's own affidavit.

Thereafter, the Oregon Supreme Court requested that petitioner "show cause" why the recommendation of the Board of Bar Examiners should not be approved by the Court. Petitioner's attorney then did respond to the Court's request (Pet. p. 6).

On November 19, 1974, the Oregon Supreme Court decided to accept the recommendation of the Board of Bar Examiners, and denied petitioner's application to practice law "because of his conduct in the taking of the bar examination." (Appendix A).

Thus, the record before this Court affirmatively

shows that on two separate occasions, petitioner was observed writing on his answer sheet after time had been called. A total time of three minutes was involved. After investigation and review of the facts by both the Board of Bar Examiners and the Oregon Supreme Court, where petitioner was allowed an additional submission on an order to show cause, the Court decided to accept the Board's recommendation that petitioner's examination be disqualified.

Certainly, the Board of Bar Examiners and the Oregon Supreme Court were entitled to conclude that since petitioner had three minutes more than other applicants to answer examination questions, his examination paper should be disqualified because the conditions of his examination were not equal to the conditions imposed on other applicants.

## CONCLUSION

The petition for a writ of certiorari should be denied for want of any properly presented federal question, and because the petitioner's contentions are without merit.

Respectfully submitted,

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of Bar Examiners, Oregon
State Bar